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SENATE BILL 16

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT A FELONY DWI CONVICTION MAY BE USED AS A PRIOR CONVICTION FOR THE PURPOSE OF SENTENCING A HABITUAL OFFENDER; MANDATING TREATMENT FOR SECOND AND SUBSEQUENT DWI OFFENDERS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE. --

A. [~~Any~~] A person convicted of a noncapital felony in this state, whether within the Criminal Code or the Controlled Substances Act or not, who has incurred one prior felony conviction that was part of a separate transaction or

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1 occurrence or conditional discharge under Section 31-20-13 NMSA
2 1978 is a habitual offender and his basic sentence shall be
3 increased by one year. The sentence imposed pursuant to this
4 subsection shall not be suspended or deferred, unless the court
5 makes a specific finding that the prior felony conviction and
6 the instant felony conviction are both for nonviolent felony
7 offenses and that justice will not be served by imposing a
8 mandatory sentence of imprisonment and that there are
9 substantial and compelling reasons, stated on the record, for
10 departing from the sentence imposed pursuant to this
11 subsection.

12 B. ~~Any~~ A person convicted of a noncapital felony
13 in this state, whether within the Criminal Code or the
14 Controlled Substances Act or not, who has incurred two prior
15 felony convictions that were parts of separate transactions or
16 occurrences or conditional discharge under Section 31-20-13
17 NMSA 1978 is a habitual offender and his basic sentence shall
18 be increased by four years ~~and~~. The sentence imposed by this
19 subsection shall not be suspended or deferred.

20 C. ~~Any~~ A person convicted of a noncapital felony
21 in this state, whether within the Criminal Code or the
22 Controlled Substances Act or not, who has incurred three or
23 more prior felony convictions that were parts of separate
24 transactions or occurrences or conditional discharge under
25 Section 31-20-13 NMSA 1978 is a habitual offender and his basic

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1 sentence shall be increased by eight years [~~and~~]. The sentence
2 imposed by this subsection shall not be suspended or deferred.

3 D. As used in this section, "prior felony
4 conviction" means:

5 (1) a conviction, when less than ten years
6 have passed prior to the instant felony conviction since the
7 person completed serving his sentence or period of probation or
8 parole for the prior felony, whichever is later, for a prior
9 felony committed within New Mexico whether within the Criminal
10 Code or not, including a conviction for a felony pursuant to
11 the provisions of Section 66-8-102 NMSA 1978; or

12 (2) [~~any~~] a prior felony, when less than ten
13 years have passed prior to the instant felony conviction since
14 the person completed serving his sentence or period of
15 probation or parole for the prior felony, whichever is later,
16 for which the person was convicted other than an offense
17 triable by court martial if:

18 (a) the conviction was rendered by a
19 court of another state, the United States, a territory of the
20 United States or the commonwealth of Puerto Rico;

21 (b) the offense was punishable, at the
22 time of conviction, by death or a maximum term of imprisonment
23 of more than one year; or

24 (c) the offense would have been
25 classified as a felony in this state at the time of conviction.

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1 E. As used in this section, "nonviolent felony
2 offense" means application of force, threatened use of force or
3 a deadly weapon was not used by the offender in the commission
4 of the offense."

5 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
6 Chapter 139, Section 54, as amended) is amended to read:

7 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
8 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
9 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

10 A. It is unlawful for a person who is under the
11 influence of intoxicating liquor to drive a vehicle within this
12 state.

13 B. It is unlawful for a person who is under the
14 influence of any drug to a degree that renders him incapable of
15 safely driving a vehicle to drive a vehicle within this state.

16 C. It is unlawful for a person who has an alcohol
17 concentration of eight one hundredths or more in his blood or
18 breath to drive a vehicle within this state.

19 D. Aggravated driving while under the influence of
20 intoxicating liquor or drugs consists of a person who:

21 (1) has an alcohol concentration of sixteen
22 one hundredths or more in his blood or breath while driving a
23 vehicle within this state;

24 (2) has caused bodily injury to a human being
25 as a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or
2 (3) refused to submit to chemical testing, as
3 provided for in the Implied Consent Act, and in the judgment of
4 the court, based upon evidence of intoxication presented to the
5 court, was under the influence of intoxicating liquor or drugs.

6 E. ~~Every~~ A person under first conviction pursuant
7 to this section shall be punished, notwithstanding the
8 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
9 not more than ninety days or by a fine of not more than five
10 hundred dollars (\$500), or both; provided that if the sentence
11 is suspended in whole or in part or deferred, the period of
12 probation may extend beyond ninety days but shall not exceed
13 one year. Upon a first conviction pursuant to this section, an
14 offender may be sentenced to not less than forty-eight hours of
15 community service or a fine of three hundred dollars (\$300).
16 The offender shall be ordered by the court to participate in
17 and complete a screening program described in Subsection H of
18 this section and to attend a driver rehabilitation program for
19 alcohol or drugs, also known as a "DWI school", approved by the
20 bureau and also may be required to participate in other
21 rehabilitative services as the court shall determine to be
22 necessary. In addition to those penalties, when an offender
23 commits aggravated driving while under the influence of
24 intoxicating liquor or drugs, the offender shall be sentenced
25 to not less than forty-eight consecutive hours in jail. If an

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1 offender fails to complete, within a time specified by the
2 court, any community service, screening program, treatment
3 program or DWI school ordered by the court, the offender shall
4 be sentenced to not less than an additional forty-eight
5 consecutive hours in jail. Any jail sentence imposed pursuant
6 to this subsection for failure to complete, within a time
7 specified by the court, any community service, screening
8 program, treatment program or DWI school ordered by the court
9 or for aggravated driving while under the influence of
10 intoxicating liquor or drugs shall not be suspended, deferred
11 or taken under advisement. On a first conviction pursuant to
12 this section, any time spent in jail for the offense prior to
13 the conviction for that offense shall be credited to any term
14 of imprisonment fixed by the court. A deferred sentence
15 pursuant to this subsection shall be considered a first
16 conviction for the purpose of determining subsequent
17 convictions.

18 F. A second or third conviction pursuant to this
19 section shall be punished, notwithstanding the provisions of
20 Section 31-18-13 NMSA 1978, by imprisonment for not more than
21 three hundred sixty-four days or by a fine of not more than one
22 thousand dollars (\$1,000), or both; provided that if the
23 sentence is suspended in whole or in part, the period of
24 probation may extend beyond one year but shall not exceed five
25 years. Notwithstanding any provision of law to the contrary

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1 for suspension or deferment of execution of a sentence:

2 (1) upon a second conviction, ~~[each]~~ an
3 offender shall be sentenced to a jail term of not less than
4 ~~[seventy-two consecutive hours]~~ five consecutive days, forty-
5 eight hours of community service and a fine of five hundred
6 dollars (\$500). In addition to those penalties, when an
7 offender commits aggravated driving while under the influence
8 of intoxicating liquor or drugs, the offender shall be
9 sentenced to a jail term of not less than ~~[ninety-six~~
10 ~~consecutive hours]~~ ten consecutive days. If an offender fails
11 to complete, within a time specified by the court, any
12 community service ~~[screening program]~~ or treatment program
13 ordered by the court, the offender shall be sentenced to not
14 less than an additional seven consecutive days in jail. A
15 penalty imposed pursuant to this paragraph shall not be
16 suspended or deferred or taken under advisement; and

17 (2) upon a third conviction, an offender shall
18 be sentenced to a jail term of not less than thirty consecutive
19 days and a fine of seven hundred fifty dollars (\$750). In
20 addition to those penalties, when an offender commits
21 aggravated driving while under the influence of intoxicating
22 liquor or drugs, the offender shall be sentenced to a jail term
23 of not less than sixty consecutive days. If an offender fails
24 to complete, within a time specified by the court, any
25 ~~[screening program or]~~ treatment program ordered by the court,

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1 the offender shall be sentenced to not less than an additional
2 sixty consecutive days in jail. A penalty imposed pursuant to
3 this paragraph shall not be suspended or deferred or taken
4 under advisement.

5 G. Upon a fourth or subsequent conviction pursuant
6 to this section, an offender is guilty of a fourth degree
7 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
8 sentenced to a jail term of not less than six months, which
9 shall not be suspended or deferred or taken under advisement.

10 H. Upon ~~any~~ a first conviction pursuant to this
11 section, an offender shall be required to participate in and
12 complete, within a time specified by the court, an alcohol or
13 drug abuse screening program and, if necessary, a treatment
14 program approved by the court. The requirement imposed
15 pursuant to this subsection shall not be suspended, deferred or
16 taken under advisement.

17 I. Upon a second or subsequent conviction pursuant
18 to this section, an offender shall be required to participate
19 in and complete, within a time specified by the court, not less
20 than a thirty-day inpatient treatment program approved by the
21 court or not less than a sixty-day outpatient treatment program
22 approved by the court. The requirement imposed pursuant to
23 this subsection shall not be suspended, deferred or taken under
24 advisement.

25 ~~[I-]~~ J. Upon a first conviction for aggravated

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1 driving while under the influence of intoxicating liquor or
2 drugs pursuant to the provisions of Subsection D of this
3 section, as a condition of probation, an offender shall be
4 required to have an ignition interlock device installed and
5 operating for a period of one year on all motor vehicles driven
6 by the offender, pursuant to rules adopted by the bureau.

7 Unless determined by the sentencing court to be indigent, the
8 offender shall pay all costs associated with having an ignition
9 interlock device installed on the appropriate motor vehicles.

10 If an offender drives a motor vehicle that does not have an
11 ignition interlock device installed on the motor vehicle, the
12 offender may be in violation of the terms and conditions of his
13 probation.

14 ~~[J-]~~ K. Upon a first conviction for driving while
15 under the influence of intoxicating liquor or drugs pursuant to
16 the provisions of Subsection A, B or C of this section, as a
17 condition of probation, an offender may be required to have an
18 ignition interlock device installed and operating for a period
19 of one year on all motor vehicles driven by the offender,
20 pursuant to rules adopted by the bureau. Unless determined by
21 the sentencing court to be indigent, the offender shall pay all
22 costs associated with having an ignition interlock device
23 installed on the appropriate motor vehicles. If an offender
24 drives a motor vehicle that does not have an ignition interlock
25 device installed on the motor vehicle, the offender may be in

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1 violation of the terms and conditions of his probation.

2 [K-] L. Upon any subsequent conviction pursuant to
3 this section, as a condition of probation, a subsequent
4 offender shall be required to have an ignition interlock device
5 installed and operating for a period of at least one year on
6 all motor vehicles driven by the subsequent offender, pursuant
7 to rules adopted by the bureau. Unless determined by the
8 sentencing court to be indigent, the subsequent offender shall
9 pay all costs associated with having an ignition interlock
10 device installed on the appropriate motor vehicles. If a
11 subsequent offender drives a motor vehicle that does not have
12 an ignition interlock device installed on the motor vehicle,
13 the subsequent offender may be in violation of the terms and
14 conditions of his probation.

15 [L-] M. In the case of a first, second or third
16 offense under this section, the magistrate court has concurrent
17 jurisdiction with district courts to try the offender.

18 [M-] N. A conviction pursuant to a municipal or
19 county ordinance in New Mexico or a law of any other
20 jurisdiction, territory or possession of the United States that
21 is equivalent to New Mexico law for driving while under the
22 influence of intoxicating liquor or drugs, and that prescribes
23 penalties for driving while under the influence of intoxicating
24 liquor or drugs, shall be deemed to be a conviction pursuant to
25 this section for purposes of determining whether a conviction

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1 is a second or subsequent conviction.

2 [N.] 0. In addition to any other fine or fee
3 [~~which~~] that may be imposed pursuant to the conviction or other
4 disposition of the offense under this section, the court may
5 order the offender to pay the costs of any court-ordered
6 screening and treatment programs.

7 [Ø.] P. As used in this section:

8 (1) "bodily injury" means an injury to a
9 person that is not likely to cause death or great bodily harm
10 to the person, but does cause painful temporary disfigurement
11 or temporary loss or impairment of the functions of any member
12 or organ of the person's body; and

13 (2) "conviction" means an adjudication of
14 guilt and does not include imposition of a sentence."

15 Section 3. EFFECTIVE DATE. --The effective date of the
16 provisions of this act is July 1, 2003.

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